

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
S.B. NO. 2743, RELATING TO THE COUNTIES.

BEFORE THE:
SENATE COMMITTEE ON GOVERNMENT OPERATIONS

DATE: Tuesday, February 13, 2024 **TIME:** 4:00 p.m.

LOCATION: State Capitol, Room 225 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Janine R. Udui, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of this bill is to allow county surcharge revenues to be used for the repair and maintenance of private roads open to the public. To accomplish this purpose, this bill amends section 46-16.8(g), Hawaii Revised Statutes (HRS), to allow counties that have adopted a county surcharge on state tax ordinances and have a population equal or less than five hundred thousand people to "use the surcharges received from the State for . . . [the o]perating or capital costs of public transportation within the county for public transportation systems, including . . . [p]ublic roadways or highways[;], including private roadways that are open to and used by the public[.]" Section 2, page 1, lines 5-15. The bill also amends section 243-6(e)(2), HRS, to allow county fuel taxes to be expended "[f]or acquisition, designing, construction, reconstruction, improvement, repair, and maintenance" of county streets, "including private roadways that are open to and used by the public[.]" Section 3, page 5, lines 7-11. Similarly, the bill amends section 243-6(e)(5), HRS, to allow county fuel taxes to be used for "county traffic control and preservation of safety upon the public highways and streets[-], including private roadways that are open to and used by the public[.]" Section 3, page 6, lines 5-8.

This bill could be strengthened by providing a more robust declaration of its public purpose in section 1. Article VII, section 4, of the Hawaii Constitution, titled "Appropriations for Private Purposes Prohibited," provides in part:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, *directly or indirectly, except for a public purpose.* [Emphasis added.]

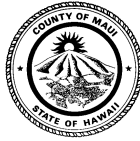
Determining what constitutes a public purpose is generally a question for the Legislature to decide. *State ex rel. Amemiya v. Anderson*, 56 Haw. 566, 574, 545 P.2d 1175, 1180-81 (1976). The question is whether the ultimate objective of the act serves a public purpose and benefits accruing to private interests are incidental. *Id.* at 576, 545 P.2d at 1182. Because this bill proposes to improve privately owned roads that are open to and used by the public, this bill could be better insulated against a challenge by explaining in more detail the public-purpose rationale underpinning the bill by inserting legislative findings.

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February 12, 2024

TO: The Honorable Senator Angus L.K. McKelvey, Chair, and
Members of the Senate Committee on Government Operations

FROM: Alice L. Lee
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 13, 2024; TESTIMONY IN SUPPORT OF SB2743, RELATING TO COUNTIES**

I **support** this measure to allow certain counties, including Maui County, to use the county surcharge on state tax revenues and fuel tax revenues for the repair and maintenance of private roadways that are open to and used by the public.

I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. In the wake of the August 2023 Maui wildfires, the County of Maui is facing unanticipated revenue shortfalls, including tax collections, and a heightened demand for resources to rebuild infrastructure.
2. Maintaining these private roadways that are open to and used by the public would aid in emergency services vehicles being able to access emergency locations timely and would assist in reducing wear and tear on emergency vehicles.

Thank you for your consideration.

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TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL: GENERAL EXCISE, FUEL, Allow county revenues to repair private roadways used by the public

BILL NUMBER: SB 2743

INTRODUCED BY: LEE, SAN BUENAVENTURA

EXECUTIVE SUMMARY: Authorizes certain counties to use county surcharge on state tax revenues and fuel tax revenues for the repair and maintenance of private roadways that are open to and used by the public.

SYNOPSIS: Amends section 46-16.8, HRS, to allow each county with a population less than or equal to 500,000 to use county surcharge revenue to be used for public roadways or highways, including private roadways that are open to and used by the public.

Amends section 243-6, HRS, to allow fuel taxes deposited in county highway funds to be used for reconstruction, improvement, repair, and maintenance, including flood mitigation, of private roadways that are open to and used by the public.

Makes additional technical and conforming amendments.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: Section 243-6, HRS, provides generally that fuel taxes, both at the state and county levels, are deposited into the highway fund. The highway fund generally funds construction and improvements to our highways and byways.

The Highway Fund is needed under federal law to demonstrate the state's expenditures for transportation infrastructure, which is a requirement to get federal aid for highway construction.

The county surcharge on the General Excise Tax is used in the City & County of Honolulu to support its rail mass transit project. The law creating the county surcharge for the other counties allowed those counties to use the surcharge funds for transportation infrastructure.

It appears that the proposed additional use of highway funds and transportation-related county surcharge revenue is within the spirit of the law. The fuel tax disposition statute, HRS section 243-6, already contains language stating that no expenditures shall be made if they would jeopardize federal aid for highway construction.

Digested: 2/10/2024

February 14, 2024

TO: Chairs Aquino and San Buenaventura and Committee Members
FROM: Carl Takamura
RE: SB 2743

My name is Carl Takamura and my sister and I provided care for my mother, especially during the latter years of her life before she passed away at 105. I strongly support this bill that would establish a tax credit for unpaid family caregivers who provide the care needed for a loved one at home.

Family caregivers are a vital and, I believe, an underappreciated component of Hawaii's long term care system. They provide countless hours of care performing daily tasks so that their loved one(s) can continue to live at home and age in place. Many caregivers struggle to provide this care, often at the sacrifice of their own families, personal health, and financial security. This bill would provide some much-needed support for these unsung heroes.

We urge you to approve this important proposal.

Mahalo,

Carl Takamura

Carl Takamura